

1 So, that's what I'm saying. It's not a real date,
2 because you are doing five or six buildings at a time. If
3 everything would go smoothly, that's what the process was.
4 But if, somewhere in the middle, it was the customer and the
5 Marketing were having contractual problem (sic), suddenly
6 somebody would come and says, "This building -- don't worry
7 about it. It's not going to be activated another month."

8 So, although we installed most of it, I might have
9 just not done anything. At that point, go to the other
10 building which we needed more, and come a month later and
11 connect the cables. So, it's not a real clear-cut, because
12 it wasn't a turnkey project. It was just an ongoing project
13 with the customers. So, I -- we were the ones who decide,
14 after we get the marketing really cleared with the building.
15 So, it wasn't --

16 JUDGE SIPPEL: All right. Well, you say here, in
17 the end sentence, that it was in your -- can you go back
18 again, if you would, following the language of your
19 affidavit, 003, Exhibit 18. All right?

20 THE WITNESS: Yes, sir.

21 JUDGE SIPPEL: The same sentence. It says,
22 "which, in your experience" -- well, let me go back and
23 state it right from the beginning again. "Mr. Nourain,
24 perhaps inadvisedly -- inadvisably assumed grant of the STA
25 request which, in his experience, had always been granted

1 within a matter of days of filing."

2 Now, in the context of what you are explaining --
3 you just finished explaining of what you were physically
4 doing to get a path or a system of paths operational --
5 really, it is a system of paths operational.

6 THE WITNESS: That is correct.

7 JUDGE SIPPEL: That is what we are talking about.
8 Was it actually your experience that, in the course of that
9 process, that it came to your attention that an STA had been
10 granted?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: And how would it come to your
13 attention?

14 THE WITNESS: As I mentioned, I was going with the
15 -- the -- with all the time line (sic) that I had.

16 JUDGE SIPPEL: Oh, yes, I know that.

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: What I am saying is, it says here -
19 - somebody wrote this for you -- but it says --

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: -- here that "it was in your
22 experience the STA requests had always been granted within a
23 matter of days of filing."

24 THE WITNESS: Yes. That means that, when I was
25 speaking with, that I told him that, right after the filing,

1 they were supposed to, within a week or so, they applied for
2 the STA and that a grant would be provided. I mean -- I'm
3 sorry. The same time they would apply for STA and the grant
4 would be provided within the 10 days.

5 So, we're talking about a few days that -- a
6 matter of days. He means within the 10 days after filing.

7 JUDGE SIPPEL: How do you know that? How do you
8 know that is what he means? Did you tell him that?

9 THE WITNESS: Because that's what -- that's what I
10 was talking with me about it (sic). And that's what I told
11 him.

12 JUDGE SIPPEL: Who did you -- you talked to
13 Mr. Barr about that language?

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: Exactly that language?

16 THE WITNESS: Well, yes, that -- that -- I am sure
17 that we -- we discussed about that language. That it was a
18 few days after I filed, we -- I mean, after I filed and the
19 FCC -- the STA was filed. A few days later would be a --
20 would be ready to be active -- ready -- authorized. And
21 then we would probably just go there and just do the
22 alignment and turn it on.

23 JUDGE SIPPEL: I am trying to stay with your
24 answers, but let me see if I have got it clear. And this
25 goes back, of course, to the first time that you were here,

1 too.

2 THE WITNESS: Yes, sir.

3 JUDGE SIPPEL: Your system of operation, your
4 modus operandi, so to speak, was you had yourself
5 established time lines in which certain things were going to
6 happen. And there was a certain period of time at which the
7 STA -- you calculated that the STA request would be granted.

8 THE WITNESS: That's correct.

9 JUDGE SIPPEL: And it was based on that time line
10 that you went forward and made these systems operational as
11 you have just described it?

12 THE WITNESS: That's correct.

13 JUDGE SIPPEL: So, it was not your experience to
14 have an STA request grant in hand before you made them
15 operational?

16 THE WITNESS: That's correct, but I was getting
17 periodic SDAs coming in.

18 JUDGE SIPPEL: So, the phrase here that your
19 experience that the SDA request had always been granted
20 means to you that it had always been granted based upon your
21 time line?

22 THE WITNESS: My time line, and receipt of SDA's
23 -- the renewed SDAs, which was coming periodically.

24 JUDGE SIPPEL: But I don't understand that answer
25 because you had said that you didn't -- that you only

1 operated off of your time line, and you weren't looking to
2 see whether or not you had the SDA in hand.

3 THE WITNESS: That's correct, but the question is
4 -- but the answer is that if I, for example, within two
5 months or three months, I would never get an SDA, and then I
6 wouldn't just go ahead and start building it, because I knew
7 that I would have to get an SDA to do that.

8 But besides that the SDAs were coming, and later
9 on I found out that most of those SDAs were the renewed
10 SDAs, and they were not the SDA. But they were just renewed
11 from the previous years, because the Commission never issued
12 the license. They would just keep renewing the SDA.

13 So, these were coming, and it wasn't such a way
14 that I wouldn't see any SDA come to me for various
15 transmitters. I would have probably questioned my
16 assumption that, hey, I cannot do it because I don't get any
17 SDA.

18 But in addition to that time line, to the
19 assumption that I had, I was also getting the temporary
20 authority coming in. The only thing was that those
21 authorities were based on the transmitter with some filing
22 number on it, and there was no path associated with it on
23 that piece of paper.

24 So, I was assuming that all these SDAs were coming
25 were under that particular transmitter, and I was just going

1 based on that, and making these operational. So, it was a
2 combination of both.

3 JUDGE SIPPEL: Well, I'm still a little bit
4 perplexed by your answer here in light of what you testified
5 to earlier; unless you are making a distinction between the
6 STAs and the licenses, in terms of what you actually had in
7 hand.

8 Are you saying that with STAs that you always had
9 an STA in hand before you made it operational, but it's just
10 that it might have expired by the time that you got it
11 operational?

12 THE WITNESS: Or it might have been an SDA for
13 something else.

14 JUDGE SIPPEL: All right. I understand the answer
15 to the first situation, but the second situation, what do
16 you mean by it would be an SDA to something else?

17 THE WITNESS: Because the SDAs would come just
18 solely for the transmitter, and so one transmitter may have
19 20 receivers under it. But when the SDA would come in, it
20 wouldn't say that this is for, for example, 20 East 50th
21 Street.

22 It would come in and say that this is for Normandy
23 Court, which Normandy Court had that building and a modified
24 building, and all the SDA was renewing all the time. So,
25 therefore, I could not see that. That was one of the

1 problems that I had with the SDA. I could not see the SDA,
2 and say that this is the SDA for this particular building.

3 I would see it coming for the transmitters, and I
4 knew that I had one of the pads was supposed to go against
5 that particular transmitter. So, I was getting the renewed,
6 and I thought it was all the new ones. But the SDA was
7 coming in, and based on that assumption, I was -- I assumed
8 that I had the authority to turn those particular pads on.

9 JUDGE SIPPEL: Well, it sounds to me from what
10 you're saying here -- and I'm still not sure that it is
11 abundantly clear what you are saying here -- that you didn't
12 quite understand how the system worked with respect to
13 getting STAs -- I mean, I should say with respect to
14 interpreting an STA when you got it.

15 THE WITNESS: No, I felt that the STA afterwards,
16 the STA that was generated by the FCC, wasn't clear about
17 whether is it for the modified, or is it for the renewed.

18 JUDGE SIPPEL: Did you ever bring this to the
19 attention of Mr. Lehmkuhl or Ms. Richter?

20 THE WITNESS: No.

21 JUDGE SIPPEL: And can you tell me why you didn't?

22 THE WITNESS: Because the STAs that were coming,
23 they did not have a building assigned to it, and they would
24 not know either.

25 JUDGE SIPPEL: And how did you know that? You

1 said that you were unclear.

2 THE WITNESS: Oh, I had the application filed, and
3 I would get those applications, and then the STA would come
4 after that, and I was going with that assumption that it was
5 -- that every time you get an STA, it will take care of all
6 of the pads that you are filing at the time, and they just
7 kept renewing the same STAs, with addition to the new pads.

8 And while later on, I found out that all the
9 renewals were for their own pads, or for their own
10 application itself, and that was the part that I
11 misunderstood.

12 JUDGE SIPPEL: Well, I'm still having a hard time
13 with that explanation, and understanding the veracity of
14 this clause in here, which in Mr. Nourain's experience had
15 always been granted in a matter of days of filing. It
16 sounds to me that the best that you had was an STA that was
17 ambiguous as far as you were concerned, and you never got
18 clarification on it from your counsel.

19 THE WITNESS: That's correct.

20 JUDGE SIPPEL: I don't how much light I shed on
21 the subject, but that's as much as I have on this point. I
22 want to go to the -- I want to go briefly to the letter
23 again, and that Exhibit 51.

24 (Continued on next page.)

25 //

1 Do you have the copy that has your note to Peter
2 Price on it?

3 THE WITNESS: Yes, this is it.

4 JUDGE SIPPEL: Would you read that note? What
5 does it say?

6 THE WITNESS: "Please review and advise."

7 JUDGE SIPPEL: Did you with any degree of
8 frequency have occasion to send anything up to Peter Price
9 and say please review and advise?

10 THE WITNESS: No.

11 THE WITNESS: What prompted you to do it on this
12 time? I know what you said. You said that Mr. Bruce
13 McKinnon was leaving, and that prompted you to send this to
14 Mr. Price. But what prompted you to put on there to please
15 review and advise?

16 THE WITNESS: Well, I guess -- and as I recall one
17 of the questions, I also added to that, that we were -- I
18 was going to get the STA's for some of the pads, and I just
19 wanted him to know that we needed to get an STA. And I was
20 told by Pepper and Corazzini for obtaining the STA that you
21 should have a valid reason that you are applying for the
22 STAs.

23 And I wanted to let him know that; and if you
24 don't go with that process, generally this is going to be a
25 lengthy time -- 60, 90, 120 -- based on what she referred

1 to. And some of our contractual obligations to our
2 customers on what the marketing was forecasting some of
3 these buildings to be in two months, or three months, was
4 that if you want to wait for licenses for all of these, then
5 we have to have to forecast well in advance, and start
6 clearing the frequencies of spending a lot of money (sic) to
7 do all the parts even prior to obtaining the contract, or
8 going with an SDA.

9 I also wanted to make sure that as a part of
10 marketing that he should let the marketing people know about
11 all these issues that we have, so that in case he didn't
12 know. I didn't know or wasn't sure that he knew or he
13 didn't.

14 So, I talked to him about that, and asked him what
15 his talk was (sic), and that generally in the meetings --
16 well, he agreed then with the way that we were going with
17 the SDA's.

18 JUDGE SIPPEL: Co you know that he read this
19 letter and got all of that out of it that you are saying?

20 THE WITNESS: I don't know if he got this letter
21 or not. I never discussed with him particularly this
22 letter, but I discussed with him about the SDA's. And some
23 of the time lines that it was under, and I don't recall that
24 I talked anything about that with him.

25 JUDGE SIPPEL: All right. So, you said please

1 review this and advise, and he never got back to you on it
2 and said that now that you have asked me to review and
3 advise you, I've looked at the letter and this is what I
4 have to say about it. He has never done anything like that;
5 is that right?

6 THE WITNESS: No, I've never had any letter back
7 out of this.

8 JUDGE SIPPEL: I mean, it could have been a phone
9 call or it could have been anything.

10 THE WITNESS: No, but we discussed that in the
11 meetings with the -- in the marketing meetings that we had.

12 JUDGE SIPPEL: The letter?

13 THE WITNESS: We discussed the contents of the
14 letter, particularly the FCC's 120 days and 90 days.

15 JUDGE SIPPEL: Well, was the letter brought to a
16 meeting and made the subject of discussion?

17 THE WITNESS: I don't recall that.

18 JUDGE SIPPEL: And then how do you know the letter
19 was discussed at the meeting?

20 THE WITNESS: Oh, I know that it was discussed
21 about 90's and SDA's, and that's why -- he did not hear
22 about SDA's before this proceeding. He knew about SDA's
23 when they were advanced, and I have discussed that with
24 him -- and with the marketing department also is aware of
25 that -- that we have to go with the SDA, or it would delay

1 the operation of the systems.

2 JUDGE SIPPEL: But Mr. Price knew about SDA's
3 before April of 1993 didn't he?

4 THE WITNESS: I'm sure he did.

5 JUDGE SIPPEL: Then I don't quite understand how
6 your question is responsive -- that your answer is
7 responsive to the question. The concerns about competitors
8 being given ammunition against Liberty, was that ever
9 discussed with -- did he ever get back and talk to you about
10 that? That's in the first paragraph of her letter?

11 THE WITNESS: You mean, Mr. Price?

12 JUDGE SIPPEL: Yes, Mr. Price.

13 THE WITNESS: No, he never did tell that to me.

14 JUDGE SIPPEL: Was that something that just wasn't
15 a concern, or why wasn't that discussed?

16 THE WITNESS: We did not discuss too much with Mr.
17 Price.

18 JUDGE SIPPEL: When you say "we", that means you
19 and who else?

20 THE WITNESS: Me, and probably most of the people
21 in that meeting; the marketing people, and if they had a
22 discussion with him after I was there in the meetings, that
23 there was not too much dialogue going on.

24 JUDGE SIPPEL: You and the people in the uptown
25 office didn't talk too much about it?

1 THE WITNESS: That's correct.

2 JUDGE SIPPEL: I have no further questions. There
3 being nothing further, this is it. Is that right, Mr.
4 Beckner, that you don't have anything more?

5 MR. BECKNER: Just a couple of housekeeping
6 matters, but they don't involve this witness.

7 JUDGE SIPPEL: Okay. You are excused. Thank you,
8 Mr. Nourain.

9 THE WITNESS: Thank you.

10 JUDGE SIPPEL: I'm sorry. Did you want to ask any
11 questions?

12 MR. SPITZER: I'm feeling left out, Your Honor.
13 No, we have nothing, Your Honor.

14 JUDGE SIPPEL: I apologize. I had a feeling that
15 you would let me know if I was missing something on that.

16 (There being no further questions, the witness was
17 excused and withdrew.)

18 JUDGE SIPPEL: What do we have for housekeeping
19 now?

20 MR. BECKNER: The matter of the deposition
21 transcripts, which I think we had discussed briefly earlier;
22 and that being Mr. Barr's deposition transcript, and Mr.
23 Nourain's. And off the record, I had some informal
24 discussions with Mr. Spitzer and Mr. Weber.

25 And I think I am stating correctly -- and they can

1 contradict me if I'm wrong -- that the consensus is that
2 even though we did not use those two transcripts in the
3 examination of the two witnesses today, that with respect to
4 completeness that we might as well have those two
5 transcripts made part of the record.

6 And I also would note that pursuant to your
7 request, we furnished with copies of -- complete copies of
8 the transcripts, and all the exhibits to them last week.
9 So, to the extent that you have read them -- and I don't
10 know if you did or you didn't -- maybe it would be good for
11 them to appear in the record.

12 So, it is a long way of saying that we move for
13 their admission into evidence.

14 JUDGE SIPPEL: All right. Well, I did read what
15 you gave me last week, including the exhibits to the
16 depositions, in anticipation that maybe I would be seeing
17 them again. So, to that extent, yeah, I think everybody
18 should be aware that -- I mean, yes, I have read some things
19 that were given to me, but they were off the record.

20 But everybody knew what I was reading, and so it
21 was again nothing surprising. The depositions -- I think it
22 does make sense to receive them into evidence, and as you
23 know what my instructions are in the use of them, I'm giving
24 much more weight to what I'm hearing here on the witness
25 stand than what I am going to give to the depositions, as

1 called depositions, as opposed to being used to cross-
2 examine.

3 But I will take that as a motion then; that you
4 are moving to receive into evidence --

5 MR. BECKNER: As Exhibits 52 and 54, TW/CV 52,
6 which is the Howard Barr deposition transcript; and TW/CV
7 Exhibit 54, which is the Behrooz Nourain deposition
8 transcript of the May 19th, 1997 deposition, as
9 distinguished from other previous depositions of him; the
10 transcripts of which I think are already in evidence.

11 JUDGE SIPPEL: All right. Now, just a second, and
12 let me get my score card here. Exhibit 52 is identified for
13 the record, and it is with the reporter as the Howard Barr
14 deposition transcript of May 16th, 1997. And that is
15 identified and moved in. No objection?

16 MR. SPITZER: No objection, Your Honor.

17 JUDGE SIPPEL: Then the motion is granted, and
18 Exhibit 52, the Howard Barr deposition is received into
19 evidence.

20 (TW/CV Exhibit 52, previously
21 marked for identification, was
22 received into evidence.)

23 JUDGE SIPPEL: And the next one is the deposition
24 transcript of May 19th, 1997, of Behrooz Nourain, and that
25 is marked for identification at this time as TW/CV Exhibit

1 54. No objection?

2 MR. SPITZER: None, Your Honor.

3 JUDGE SIPPEL: And the motion is granted, and
4 Exhibit 54 for identification is received in evidence now as
5 TW/CV Exhibit 54.

6 (TW/CV Exhibit 54 was marked
7 for identification and
8 received into evidence.)

9 JUDGE SIPPEL: All right. That accounts for
10 everything that was submitted with your binder that has been
11 premarked, and it also includes, or we have acted upon
12 Exhibit 66. And I have given the copy that was before the
13 witness to the reporter, who can mark that as the second
14 copy for purposes of the hearing record.

15 MR. BECKNER: All right. Thank you, Your Honor.

16 JUDGE SIPPEL: All right. And the only other
17 thing that we have, as I want to remind everyone, and I
18 expect that I will get an order out on it tomorrow, a very
19 short order, that June 4 is the cut-off date for any
20 corrections to the Richter deposition.

21 And the other dates, our proposed findings have
22 already been set. And so there is no misunderstanding, June
23 11th for the supplemental proposed findings, and on June
- 24 18th, the replies. And the June 11th supplementals will, of
25 course, be hand-delivered to opposing counsel.

1 And I guess after that then that it is all mine.

2 Is that it?

3 MR. BECKNER: Yes, sir.

4 JUDGE SIPPEL: Okay. Thank you very much, and for
5 those out of town, have a safe trip back.

6 (Whereupon, at 4:12 p.m., the hearing was
7 concluded.)

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REPORTER'S CERTIFICATE

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CASE TITLE: Liberty Cable
HEARING DATE: May 29, 1997
LOCATION: Washington, D. C.

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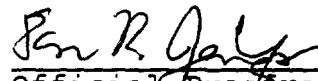
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